

State Board of Equalization

OPERATIONS MEMO

For Public Release

No.: 1041

Date: May 30, 1996

Subject: RELEASE OF SALES AND USE TAX INFORMATION TO THE PUBLIC

PURPOSE

This operations memo is intended to provide general guidelines for providing copies of information contained in Board files and records to the general public. It is not intended to override guidelines established for providing information to other government entities. For these guidelines, one should refer to the Board pamphlet, "Information Security at the Board of Equalization", and the Board of Equalization Administrative Manual beginning with Section 7200. Contact should be made with the Board's Information Security Officer regarding requests from any unlisted government entities to ensure proper handling of such requests.

BACKGROUND

Information contained in the files and records of the Board relating to taxpayers is confidential as provided in Government Code section 15619 (all Board tax records) and Revenue and Taxation Code section 7056 (Sales and Use Tax Law). Overlying the confidentiality sections of law which prohibit the disclosure of confidential taxpayer information are two other acts: The Information Practices Act and the Public Records Act. The Information Practices Act (IPA) is a "private access" statute; that is, it provides that individuals are to be allowed access to any personal information about them which is maintained in the files and records of any state agency and restricts the disclosure of such personal information about such individuals to members of the public-at-large. The Public Records Act (PRA) provides "public access" to any records maintained by a state agency which are not otherwise exempt from disclosure.

The Government Code provides that "public records" include any writing containing information relating to the conduct of the public business prepared, owned, used, or retained, by any state or local agency regardless of physical form or characteristics. The Government Code also provides that public records are open to inspection at all times during the office hours of the state agency and every person has a right to inspect any public record, except as otherwise provided. Government Code Section 6254 (k) does not allow nondisclosure of an entire document simply because it contains some confidential information. Instead, confidential information, such as taxpayer's names and account numbers, should be redacted, and the remainder of the document should then be released.

REQUIREMENT TO DISCLOSE "WORKING LAW" UNDER THE PUBLIC RECORDS ACT

The decision in State Board of Equalization v. Superior Court (1992) 10 Cal App. 4th 1177 prohibits the Board from withholding "working law." Records which disclose the Board's practices in applying its regulations to the cases coming before it are working law. This is a matter of interest to the public and to persons coming before the Board regardless of the precedential effect of the records.

State Board of Equalization v. Superior Court holds that memoranda between the legal staff and other departments of the Board which are relied on by those departments to make determinations about the applicability of statutes or regulations to certain tax situations are working law and must be disclosed to the public. For example, if an auditor asks the legal staff for a memorandum interpreting a statute or regulation, that memorandum, with taxpayer information redacted, must be disclosed upon request. The Board's past practice of asserting the attorney-client privilege to withhold release of internal legal memoranda no longer applies to these documents. Once confidential taxpayer information has been redacted, advice letters to taxpayers must also be released upon request.

DOCUMENTS WHICH MAY BE WITHHELD

In contrast to the working law of the agency, there are legal opinions and internal correspondence addressed to or from attorneys in the Legal Division that bear confidential status by virtue of the attorney-client privilege or the attorney work product rule. Memoranda falling within the following listed categories are often labeled "Confidential: Attorney-Client Privilege" or Confidential: Privileged Document," and should not be released to the public without prior approval of the author or the Legal Division:

1. Memoranda to a Board Member or Members or the Executive Director prepared for the signature of the Chief Counsel, except contribution disclosure opinions.
2. Memoranda directly related to litigation in which the Board is a party, including refund and collection actions.
3. Memoranda between the Legal Division and the Attorney General's office when the Attorney General is acting as the Board's attorney.
4. Intra-Legal Division memoranda which reflect an attorney's impressions, conclusions, opinions or legal research or theories, except briefs filed by the Sales and Use Tax Department or Special Taxes Department with the Appeals Review Section in accordance with the direction of the Board.
5. Memoranda between the Legal Division and program staff which evaluate the strengths or weaknesses of the agency's position regarding the interpretation of statutory or regulatory provisions. This includes memoranda having to do with requests for reconsideration of reports issued by the Appeals Review Section.
6. Memoranda which analyze new or proposed statutes or regulations affecting programs administered by the Board.

Note that if the holder of the attorney-client privilege, without coercion, and in a nonconfidential context, discloses a significant part of the communication or consents to such disclosure by anyone, this constitutes a waiver of the privilege. Accordingly, if there are any questions of whether a particular document should be withheld as privileged information or must be released, it should be discussed with and reviewed by the Legal Division.

In addition to documents exempt from public disclosure under the attorney-client privilege or the attorney work product rule, documents relating to confidential audit or compliance techniques should not be released to the general public.

ADVICE TO POTENTIAL PUBLIC RECORDS ACT REQUESTERS

Persons interested in obtaining Board information should be advised to submit written requests to the attention of the Executive Director. Requests should be as specific as possible in identifying the records being sought, at minimum, identifying the subject matter of interest (e.g., Regulation 1501, Section 6596, sales by Indians, etc.). If the requester is seeking records from a specific office, that office should be identified.

A requester may want information on a specific topic, e.g., orthotic and prosthetic devices, that may be contained in a file on a broader subject, such as, Regulation 1591, "Prescription Medicines". Accordingly, a request may be made for an index of the documents contained within general subject files that may include the specific topic of interest. From the index, copies of specific documents may be identified and subsequently requested in writing.

PROCEDURES IN HANDLING REQUESTS UNDER THE PUBLIC RECORDS ACT

Acknowledgment of Requests

Requests for documents that fall under the PRA should be immediately routed to the Legal Division, Assistant Chief Counsel - Special Taxes and Administration for timely acknowledgment which must be made within ten working days of receipt of the request. Upon acknowledgment, the Legal Division will forward a copy of the request to the appropriate Board section for handling. The Legal Division should route requests for district office information to the Audit Evaluation and Planning Section which will coordinate preparation of the requested records for release. These requests may be for document indices and/or copies of documents.

PRA requests that incorrectly refer to the IPA should be handled under the guidelines for PRA requests. Likewise, IPA requests that incorrectly refer to the PRA should be handled under the guidelines for IPA requests explained later in this operations memo.

Requested Documents

As stated earlier, a request may be for documents addressing a specific type of property or transaction, or a request may be for documents on a broader category, such as a regulation or code section. When handling these requests, either for document indexing or redacting and releasing documents, staff should adhere to the requested subject matter as closely as possible without being excessively restrictive. Accordingly, note that it is not always necessary to index entire files and not all documents contained within these files need to be redacted and released. This procedure may avoid unnecessary costs to the taxpayer and may reduce document preparation time for staff while providing the appropriate documents on the desired subject.

Document Indexing

A request for documents on a particular subject may be preceded by a request for an index of reference material contained in specific files in an effort to more narrowly identify the material sought and to reduce costs by only requesting copies of the documents necessary. An index should clearly identify the source of the material and include the following information for each document, preferably on a spreadsheet:

1. Name of Addressee (if this is a taxpayer, the information is confidential and should be substituted with the term "taxpayer"),
2. Name of the Author (if this is a taxpayer, the information is confidential and should be substituted with the term "taxpayer"),
3. A short description of the subject of the document,
4. Document date, and
5. Number of pages

An additional column may be reserved for eventual use in identifying confidential documents not allowed to be released. See Exhibit 1 for a sample index.

Each document should also be numbered as a reference to assist in locating documents at a later time. To allow continuous numbering, documents should be numbered sequentially from the oldest document forward. The original index should be maintained conspicuously within the file indexed to avoid duplicate effort in the event a subsequent request is received. As subsequent requests are received, the index should be updated before it is photocopied and released.

A photocopy of the completed index should be routed to the Legal Division for mailing to the requester. The Legal Division will also be responsible for providing the related charges to the Accounting Section for appropriate billing to the requester. In general, the cost for this service will be calculated at ten cents (10¢) per page provided.

Document Preparation and Approval for Release

The integrity of the original documents should be maintained as much as possible. Accordingly, photocopies of the original documents should be made for purposes of redacting confidential information and any other markings necessary as a part of the process of releasing information to the public. The photocopies should be used for redacting confidential information and to reproduce the copies to be released to the public.

The photocopies should be legible and have adequate contrast for reproduction purposes. Redacting of confidential information is generally performed using black felt tip pens, correction tape, or other similar material providing a mask preventing exposure of confidential information.

Confidential information that should be redacted includes: taxpayer names, addresses, signatures, account numbers, telephone numbers, trade secrets, products or processes that can be used to identify the taxpayer, logos, letterhead on incoming correspondence, author's initials, file names, and any other information that can be used to identify the taxpayer. This includes handwritten notes as well as typed information contained in the formal correspondence. Care should be taken during the redacting process to ensure that confidential information is completely and adequately masked so that it is not revealed upon reproduction.

Documents recommended for release, including documents with redacted information, should be organized in sequential order. Documents recommended to be withheld from public release should be separated from the release copies and an index should be prepared to identify these documents and the basis for withholding them from public release.

All of the documents, including the index of documents to be withheld from public release should be submitted to the Legal Division for review and approval for release or withhold. The reviewing attorney should initial, date, and indicate "PRA review" in the lower right hand corner of each document.

After completing the review of documents, the Legal Division will return the documents. The Section working the request should make the appropriate corrections as recommended by the Legal Division and make the photocopies of the documents to be released. The photocopies to be released should contain a disclaimer on each document indicating that the information contained within may be outdated. See Exhibit 2 for a sample disclaimer statement included on a redacted document prepared for release. One effective means of transferring the disclaimer statement to each release copy is through the use of a copy of the disclaimer on a transparency used as an overlay during the photocopy process.

Release of Documents

Upon completing the photocopies of the documents for release, the photocopies, the number of photocopied pages for release, and a copy of the index of withheld documents should be forwarded to the Legal Division for mailing to the requester. The Legal Division will also be responsible for providing the related charges to the Accounting Section for appropriate billing to the requester. In general, the cost for this service will be calculated at ten cents (10¢) per page provided.

The law provides that copies of documents should be furnished within a reasonable amount of time. Generally, it is Board practice to provide documents within 30 days of receipt of the request. If additional time is needed beyond the 30 days to prepare documents for release, the Legal Division should be contacted so that the requester can be appropriately informed of the possible delay.

Storage of Redacted Copies of Documents

Sections handling requests should organize the documents, for each request, in chronological order, or, if indexed, in sequential order. In addition, the documents should be properly identified as to its source and the subject they pertain to. If an index is prepared, a copy should also be included as well as a copy of the index of unreleasable documents. Upon completing these tasks, the information should be stored on location for use in responding to subsequent requests.

PROCEDURES IN HANDLING REQUESTS UNDER THE INFORMATION PRACTICES ACT

Document Preparation and Release

All information maintained in a taxpayer's file which is about the taxpayer must be made available to the taxpayer or his/her authorized representative. However, certain documents retained in a file, such as memoranda with reference to taxpayers other than the taxpayer whose file information is being requested, should be redacted to remove confidential information, e.g., taxpayer name, account number, and other information that would disclose the identity of the taxpayer, before the document is photocopied and released. In addition, any information contained in a file, which is of a confidential nature under the attorney-client privilege or attorney work product rule, is not disclosable. Copies of redacted documents should be retained in the taxpayer's file attached to the original file document for future use.

Requests for copies of information from a taxpayer's own file should be handled by the district office that maintains the file. Requests for copies of file information maintained in Headquarters should generally be handled by the section that receives the request or the appropriate section that handles the type of information requested, e.g., requests for refund information should be handled by the Refund Section, requests for petition information should be handled by the Petition Section, etc.

Acknowledgment of a request for documents is not required by the IPA. However, it is a good practice to follow in particular when the preparation of documents is anticipated to require an extended period of time to complete. Copies of documents should be furnished to the authorized requester within 30 days of receipt of the request. An additional 30 days is allowed in the event the records are geographically dispersed or are inactive and in central storage.

Charges for these services and copies of documents should be made in accordance with established guidelines. Generally, an agency may charge no more than ten cents (10¢) per page. See Board of Equalization Administrative Manual Section 7223.1.

For more information regarding the IPA, refer to the pamphlet, "Information Security at the Board of Equalization", and the Board of Equalization Administrative Manual beginning with Section 7223.

OBSOLESCENCE

This operations memo will become obsolete when the necessary information has been incorporated into the appropriate manuals and publications.

Glenn A. Bystrom
Deputy Director
Sales and Use Tax Department

Attachments

DISTRIBUTION 1-D